

22122

V.3463  
3463

RILEY LEON HUGHES )  
Plaintiff- Appellant )  
v. )  
J HERMAN GENGLER \* )  
Defendant Appellee )

C I V I L N O . 9 8 5 1

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF CALIFORNIA

B R I E F F O R A P P E L L A N T

Prepared for the use of:-

THE UNITED STATES COURT OF APPEALS. NINTH CIRCUIT COURT AT SAN FRANCISCO, CALIFORNIA.

By

*Riley Leon Hughes*  
RILEY LEON HUGHES

Appointing myself in Propria Persona as my attorney. TITLE 28 Sec. 2678 ATTORNEY FEES; Penalty- limiting fees to 25% of judgement, precludes plaintiff from hiring an attorney.

Note:

Defendants should include THE UNITED STATES POST OFFICE and John Does; see argument in REVIEW OF THE SIGNIFICANT FACTS OF THE RECORD OF THE ABOVE CASE...AND A BRIEF HISTORY OF THE CASE, page 7 line 15.

LODGED

FILED

Title page

SEP 1 1967

SEP 5 1967

WM. B. LUCK, CLERK

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SEP 1 1967



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LIST OF DOCUMENTS PRESENTED BY SEQUENCE:

PETITION FOR CORRECTION OF PETITION FOR REMOVAL OF A  
CIVIL ACTION AND FOR RELIEF FROM POTENTIAL INJUDICIOUS  
ACTS BY THE DEFENDANTS. June 28, 1966.

PETITION FOR DECISION IN BEHALF OF PLAINTIFF Aug. 16, '66.

ANSWER TO MOTION FOR MORE DEFINITE STATEMENT POINTS  
AND AUTHORITIES. Abreviation: - ANS. FOR PTS. AUTHORITIES.  
Oct., 14, 1966


MEMORANDA STATEMENT OF FACTS STIPULATIONS POINTS OF LAW  
Abreviation for: - MEMO. FACTS PTS OF LAW. Apr., 19, 1967

ANSWER TO MEMORANDUM AND ORDER. ANS. TO MEMO. & ORDER.  
May 1967

PETITION FOR NEW TRIAL June 1967

NOTICE OF APPEAL June, 27, 1967

PETITION FOR HEARING ON MOTION FOR APPEAL -- AND THAT  
"PETITION FOR NEW TRIAL", BE CONSIDERED A SUPPORTING BRIEF  
FOR ABOVE ACTION. July 26, 1967. (List is not complete.)



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CITATIONS

CASES:

AMERICAN OIL SERVICE, INC. v. HOPE OIL CO.

233 Cal. App. 2d 822.

Payments made under mistake recovered.

Used in- ANSWER TO MEMORANDUM AND ORDER of May 1967

Page 6 line 16.

- NOTICE OF APPEAL

Page 4 line 27

CHRISTIAN BEACON v. UNITED STATES

C. A. N. J. 322 F2d 512

"Federal Courts have jurisdiction..."

Used in- PETITION FOR NEW TRIAL page 3 line 22.

HANNAE v. WILLIAMS

159 Cal 142, S. F. No. 5227 Jan, 4, 1944.

Payment made due to mistake recovered.

REVIEW OF SIGNIFICANT PARTS... BRIEF HISTORY...

See use of case in REVIEW Page 14 line 26.

In ANS. TO MEMO & ORDER Page 7 line 12.

Used in NOTICE OF APPEAL Page 5 line 9.

CLAUS H HENNINGTON AND HELEN HENNINGSEN v.

BLOOMFIELD MOTORS, INC., AND CHRYSLER CORP.

161 A2d 69 1960 (Atlantic Reporter)

"The gross inequality of bargaining position..."

The task of the judiciary..." A parallel case decided  
in favor of an ordinary man

Used in ANS. TO MEM & ORDER May '66 pg. 2 line 32.



CASES (Cont.)

MATTESON v. UNITED STATES 240 F2d 517, 518-519 (2d-  
Memorandum and Order combining judgement caused /  
misunderstanding of appeal time limit. (- Cir 1956)

Used in,- PETITION FOR NEW TRIAL page 3 line 10

TEAL v. FELTON, 90 U.S.. N.Y. 12 Howard. 289, 13L  
Ed 990. Recovered cost of Newspaper withheld  
by postmaster from P. O. Box.

Used:, NOTICE OF APPEAL page 6 line 10  
PETITION FOR NEW TRIAL page 2 line 9  
THIS BRIEF page 11 line 9  
19 line 19

PURE OIL CO, v. TUCKER 164 F2d 945

Restitution for over payments made.

Used: NOTICE OF APPEAL page 4 line 26

STATUTES

UNITED STATES SUPREME COURT DIGEST 1967 Cumulative  
Supplement to volume 17 of Court Rules - Rule 53.

Used: - PETITION FOR NEW TRIAL page 3 line 1

TITLE 18 U.S.CODE Sec. 1701 - 1703

Used; - NOTICE OF APPEAL page 1 line 17  
page 3 line 7

TITLE 28 U.S.CODE Sec. 171

Used: - ANS FOR PTS. AUTHORITIES Apr. 19, 1967

Revised reference for page 6 line 20





STATUTES (Cont.)

TITLE 28 U.S. CODE Sec. 171 (Cont.)

Used:- REVIEW OF SIGNIFICANT PARTS...BRIEF HIST.

Page 6 line 16

TITLE 39 U.S.CODE Sec 2101 (For Sec. 501 see below)\*

Used:- REVIEW PTS... HISTORY Page 4 line 23

TITLE 39 U.S. CODE Sec. 2302

Used:- NOTICE OF APPEAL Page 7 line 23

TITLE 39 U.S.CODE SEC. 2409

Used:- REVIEW PTS... HISTORY Page 6 line 16

TITLE 39 U.S. CODE Sec. 3523

Used:- NOTICE OF APPEAL Page 1 line 20

TITLE 39 U. S. CODE Sec 4055

Used:- NOTICE OF APPEAL Page 5 line 6

TITLE 39 U.S.CODE Secs. 6006 - 6007

Used:- ANS. TO MEMO AND ORDER , Pg. 1 line 21  
Pg. 2 line 10

REVIEW PTS. HISTORY Page 11 line 3

NOTICE OF APPEAL Page 1 line 20

TITLE 39 U.S. CODE Sec. 501

Used:- REVIEW PTS... HISTORY Page 5 line 16

POSTAL MANUAL

PART 115 COMPLAINTS (See also PART 313)

Used:- Notice of Appeal Page 3 line 11



POSTAL MANUAL (Cont.)

PART 147 PAYMENTS AND REFUNDS (Use for Part 34)

Used:- ANS. FOR PTS. AUTHORITIES Pg. 3 line 8  
NOTICE OF APPEAL Page 7 line 11  
REVIEW PTS. HISTORY Page 7 line 7

PART 166, SPECIAL DELIVERY (see 354 Spec. Deliv. Serv.)

Use for §56.\* in ANS. FOR PTS. AND AUTHORITIES  
Page 2 line 15  
Used:- REVIEW PTS. HISTORY Page 7 line 6  
NOTICE OF APPEAL Page 2 line 6

PART 313 CUSTOMER COMPLAINTS

Used:- NOTICE OF APPEAL Page 3 line 12

PART 335 POSTAGE DUE MAIL (Use to replace TITLE VI  
reference)

Used:- ANS. FOR PTS. AUTHORITIES Pg. 3 line 14  
REVIEW PTS. HISTORY Page 4 line 4

PART 354 SPECIAL DELIVERY SERVICE (See also Sec.166)

Used:- ANS. FOR PTS. AUTHORITIES Pg. 2 line 15  
NOTICE OF APPEAL Page 3 line 20

PART 452.8 and 852

See REVIEW PTS. HISTORY Page 7 line 4

PART 742 CODE OF CONDUCT

Used:- NOTICE OF APPEAL Page 7 line 27

\*Note:

Given TITLE 39 Chapter 1 part 53 in this document. Except for minor differences Part 166 and 354 together will equal what is quoted. The working POSTAL MANUAL IS LOOSE LEAF and minor changes are frequent.



TEXTS AND OTHER SOURCES

1. THE AMERICAN REPUBLIC by Peter Odgaard  
PART IV Chapter 19, "Legal responsibility..pg.465  
Used in this BRIEF page 8 line 1.  
PART V POWER LAW LIBERTY Chapter 31 page 508  
Used in this BRIEF page 11 line 24.
2. ARCO COURSE BY ARCO PUBLISHING CO., 480 Lexington  
Ave. N. Y.  
Used in ANS. FOR PTS. AUTHORITIES page 4 line 26.
3. CORPUS JURIS SECUNDUM Postoffice §  
(II P.O. DEPT. P.O.s., P.M. and other officers.)
  - a. In general --- By statute U.S.C.A. § 361 has  
power to promulgate postal regulations which are  
controlling and have the force of law, subject  
to the limitations that the regulations must not  
be inconsistent with the postal act and that they  
do not trench on legislative power, but are  
designed and purport only to be administrative  
in character. -- Used:- this BRIEF pg. 12 ln. 23.
4. READER'S DIGEST ALMANAC 1967 page 443  
Used:- This BRIEF Page 12 line 11



## JURISDICTIONAL STATEMENT

Mr. J. Herman Gengler is the postmaster at Marysville, California. This case is the result of the above postmaster refusing to accept a protest made by the plaintiff in regard to services and postal charges made at the Marysville postoffice. This case was originally filed in the SMALL CLAIMS COURT, COUNTY OF YUBI, STATE OF CALIFORNIA. As the defense chose not to recognize the plaintiffs claim for reimbursement of overcharges, and alleged that the postmaster was,- "(Acting) within his official discretion under color of such office",- action was taken by the defense to move the case to the U. S. District Court at Sacramento, California, by authority of Title 28 Sec. 1446.

The plaintiff accepted the change of jurisdiction on the assumption that an equitable decision would be made based on all of the facts presented. However the Appeals Court may find upon reviewing the case, that the government attorneys were in error, in not recommending that the plaintiff be reimbursed for his overcharge, and that they should have let the postmaster defend himself, in the lower court, since the postmaster was not acting under any Postal or Government order, in choosing not to accept the legitimate complaint of the plaintiff. See TEAL v FELTON, 13 law Ed. 90. Discussed in NOTICE OF APPEAL page 6 lines 10 through 28 and page 7, lines 1 through 24.





In The American Republic by Peter H. Odegard, Part IV, THE STRUCTURE OF POWER Chapter 19, The Federal Bureaucracy, page 465 top right, "Legal responsibility has been enforced through the ordinary courts, and liability for wrongful acts by civil servants has attached to the individual and not to the state."

As the case now stands, the plaintiff must choose to appeal to the Court of Appeals for relief.

#### QUESTIONS PRESENTED

1. Whether the postmaster, - "(Acting) within his official discretion and color of such office", - has the right to ignore postal regulations.
2. Whether the plaintiff has the right to expect reimbursement for charges collected in error for services not rendered.
3. Whether a postmaster not acting under Postal or Government regulations is immune from tort action when such personal, ministerial action damages the rights of a postal patron.
4. Whether a postmaster can annul a postal patron's right to make a complaint of petition.
5. Whether the court erred in ruling against question 10. (2) above, and not considering the other questions.
6. Whether the court erred in not granting plaintiff legal aid and whether the government is a party to the case.

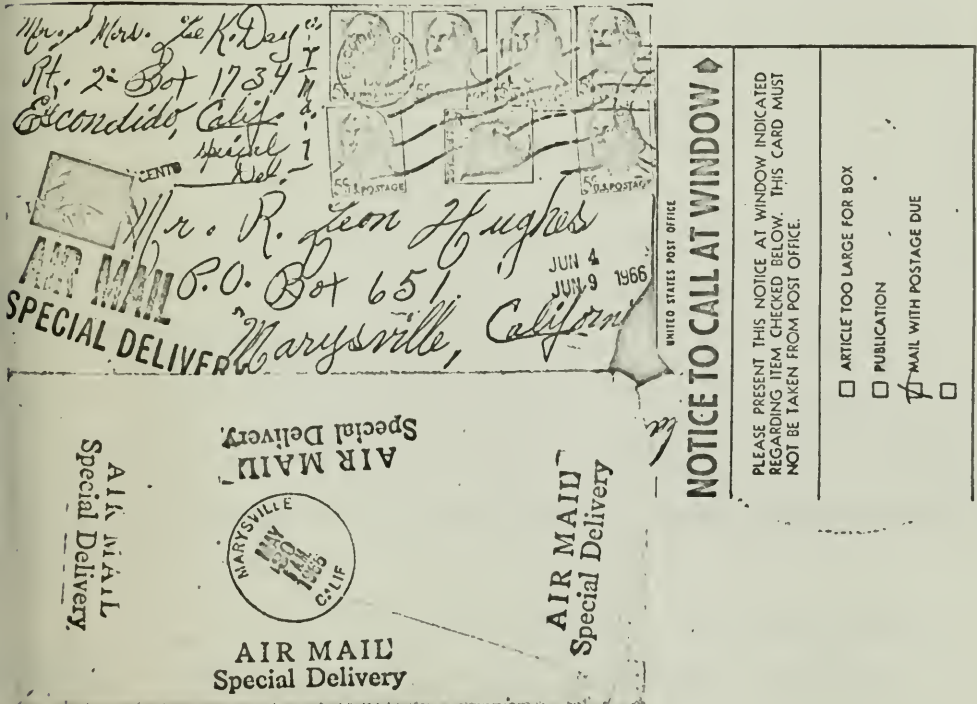


STATEMENT OF FACTS

The reproduction of the letter shown below, exhibits the facts . It was received at the post office on May 30, 1966 a holiday, and would have been received by the plaintiff on that day if it had been placed in his post office box. It was withheld for alleged postage deficiency regardless of the fact, that no outside address was on file at the postoffice to make special delivery service possible.

The 3¢ stamp, canceled but undated represents the alleged deficiency.

The plaintiff took time off from work to enquire about





the mail shortly before the postoffice's closing time about June 2nd, 1966. The postal clerk refused delivery of the letter until he had taken 3¢ from the plaintiff.

When the plaintiff telephoned the postmaster to protest the following day, the postmaster declined to accept the protest. See REVIEW OF THE SIGNIFICANT PARTS OF THE RECORD ... AND A BRIEF HISTORY OF THE CASE, pages 1 2. and 3 for more details of facts.

Note:

This is not an isolated case. I have a letter from a soldier's wife, in which she mentions having to drive into Marysville for her special delivery letters although she lives within two (200) hundred feet of the postman's rural route.

#### SUMMARY OF ARGUMENT

It is the argument of the plaintiff that rules in the Postal Manual are adequate to govern in this case

1. POSTAL MANUAL, Part 355 Special Delivery Service, sub part 354.7 PAYMENTS FOR DELIVERY, FEE BASIS 354.722.

Do not pay a fee when: a. Special Delivery Service is not rendered or attempted, b. Delivery is made through post office window or box....

2. Part 147 PREPAYMENT AND REFUNDS, sub part 147.2 Refunds, 147.23 Amount of refund available, 147.231



Refunds of 100% will be made: a. When the postal service is at fault.... f. When fees are paid for special delivery, special handling, and certified mail and the article fails to receive the special service for which fee has been paid.

3. PART 313 CUSTOMER COMPLAINTS-313.2, ORAL COMPLAINTS, 313.21. Employees must make a memorandum in writing on Form 1835, Record of call or visit, of all complaints received orally either in person or by telephone.

4. A postmaster is not immune from court action unless he is acting under an existing postal regulation. See TEAL v. FELTON, 12 Howard (284 US), 13 LAW. Ed. 990, 40 c P.C.

§ 11.22. See NOTICE OF APPEAL page 6, lines 10 & 7, page 7 lines 1 to 24.

5. Sums paid as the result of errors are recoverable. See AMERICAN OIL SERVICE vs. HOPE OIL COMPANY 233 Cal. App 2d 822 and HANNAH vs. Williams (S.F. No. 5227 Jan. 4, 1944. See plaintiff's REVIEW OF THE SIGNIFICANT FACTS... AND A BRIEF HISTORY OF THE CASE, page 13, lines 16-27 and through pages 14 and 15 to line 13 on page 16.

6. The NOTICE OF APPEAL, by the defendant should be considered to be an argument supplementing this brief. Much of its material is copied in the following argument.

7. The persistence with which the postmaster was defended in the case TEAL v. FELTON (summarized on page 19), should be noted. Persistence without merit on public purse.





## ARGUMENT

In a MEMORANDUM AND ORDER dated may 1, 1967 and sent to the Plaintiff, the Court determined against the Plaintiff's effort to recover the three cents that had been charged against him in error and his costs. The following, quotes lines 19, 20 and 21 of page 2 of the MEMORANDUM AND ORDER, "It is, therefor, ordered that the plaintiff take nothing by this action and that judgement be for the defendant." This decision was affirmed by a JUDGEMENT of the Court dated July 7, 1967.

In arriving at the decision the Court erred, in fitting the following statement ~~to~~ to the case, from same MEMORANDUM as above, 2nd paragraph page 2, "It is elementary law that if a person pays even an illegal demand (This is not to suggest that the demand here is illegal. That question need not be reached.) or pays a demand through ignorance or misapprehension of the law respecting its validity, but not under compulsion or coercion, he cannot recover the money so paid. (See: Pure Oil Co. v. Tucker, 164 F2d 945; American Oil Service Inc. v. Hope Oil Company, 233 Cal. App. 2d 822; Thompson v. Thompson, 218 Cal. App, 2d 804; Holm v Bramwell, 20 Cal.App. 2d 332; and Mc Millan v. O'Brien, 219 Cal. 775).

None of these cases were mentioned or discussed at or prior to the trial. (See plaintiff's STATEMENT OF POINTS (2). However the second case mentioned above, can be interpreted in the plaintiff's favor, because in it, it was determined



that money paid due to error or mistake of facts is recoverable. In HANNAH v. WILLIAMS (see page 11 line 16) it was determined that an advance made by the plaintiff was recoverable because of a mutual mistake with respect to the law.

The Court concluded the paragraph discussed above, lines 16,18 page 2 as follows, "I am of the view that this rule is determinative of this case and that there is no need for me to discuss any of the issues which plaintiff seeks to raise. This avoidance of the issues condones the following offense:

Violation of U. S. Code, TITLE 18, Sec. 1701 and 1703 by post office clerks, for who's conduct the postmaster, (the defendant) is responsible, by authority of U. S. Code Sections 3523, and 6006. - Special Delivery Service (b) -, of TITLE 39, as a result of the clerks in error withholding a personal letter from the post office box of the plaintiff, P. O. Box 651, Marysville, California, on May 30, 1966 a holiday, because of a charge for special delivery service that was not rendered; and leaving instead of the letter in the box, a printed card -- (POD Form 3907) marked  MAIL WITH POSTAGE DUE. The POSTAL MANUAL Part 166.43 gives instructions that notice be left that special delivery mail is being held. See proper card in exhibits.

POSTAL MANUAL 166.4 DELIVERY PROCEDURES, .41 To Whom Delivery May Be Made.-- Line 3, "At letter-carrier offices, special delivery mail, other than registered and insured,



addressed to a post office box or to the general delivery, is delivered to the box or held for delivery through the general delivery window, unless the addressee has given written notice that such mail be delivered to his residence or place of business." Since the plaintiff had not left any written notice for delivery of any kind of mail to his residence or elsewhere, there was no means by which the plaintiff could have been given special delivery service. Since no fee is paid for delivery of special delivery mail to a post office box (Reference POSTAL MANUAL Part 354.722 a.), and a 100% refund is allowable when payment has been made for such service and such service has not been rendered, (Reference POSTAL MANUAL Part 147.231 c.) the postal clerk should have ignored any postage due note on the letter and have left the letter in the post office box. As this was not done, then a mistake was made by the postal clerk. A mistake was also made when the postal clerk demanded and took from me 3¢, before he would surrender the letter.

This case is quite like the case of: WILLIAM W TEAL, Plaintiff in Error, v. MARY C. FELTON, by her next friend, Charles T. Hicks. (90 U.S. TEAL v. Felton, N. Y. 12 How. 289, 131 Ed. 990) In this case the postmaster, Teal, at Syracuse N. Y. 1847, made the mistake of assuming a single letter on the wrapper of a newspaper to be a message to Mary C. Felton, the addressee and withheld the newspaper,



claiming additional funds due for first class mail. The woman's first friend Charles T. Hicks brought suit in her behalf to recover the value of the newspaper, six (6¢) cents. The postmaster was defended in every court, from that of the justice of the peace for Onodaga County of New York up to and including the Court of Appeals of New York. The verdict in each court was six (6¢) and costs, final total. \$136.19. What was finally said there could be said in this case:

"... The State Court had jurisdiction to try the case. State Courts had jurisdiction over all cases of trover, and the constitution of the United States did not abrogate their jurisdiction in such cases as the present.

Mr. Justice Wayne, "This was not a case in which judgment could be used to determine any fact, except by some other evidence than the letter itself. Nor was it one calling for discretion in the legal acceptance of that term in respect to officers who are called upon to discharge their duties. What was done by the postmaster, was a mere act of his own, and ministerial, as that is understood to be distinct from judicial. ... It is the law which gives the justification, and nothing less than law can give irresponsibility to the officer, although he may be acting in good faith under the instructions of his superior of the department to which he belongs. Here the instructions exceed the law, as marks and signs of themselves without some knowledge of their meaning and intention in the use of them, are as we have said, neither memoranda or writings. TRACY v. SWARTWOUT





10 Pet. 80."

The case just mentioned is concerned about a newspaper that was withheld from a postal patron. This case is concerned with a personal letter. The public has a right to expect to receive unmolested its personal mail by paying the highest rates for mail, as first class mail, and by act of CONGRESS 39 U. S. C. Sec. 2302 DECLARATION OF POLICY, specifically, "(1) that the post office is a public service."

The court erred in taking no step or action to protect such right of the plaintiff.

BASIC STANDARDS OF ETHICAL CONDUCT. From Postal Manual 742.2. (House Concurrent Resolution 175, 85th Congress, 2d session, 72 Stat. B12)

"1. Put loyalty to the highest moral principles and to country above loyalty to persons, party or government Dept.

"2. Uphold the Constitution, laws, and legal regulations of the United States and of all governments therein and never be a party to their evasion.

"5. Never discriminate unfairly by dispensing of special favors or privileges to any one, ....

"10. Uphold these principles ever conscious that public office is a public trust."

#### CONCLUSION

The subject of decisions is discussed in THE AMERICAN REPUBLIC by Peter H. Odegard under Equal Justice under The Law, page 508, paragraph 3 quoting Judge Bernard Botwin,



"The thinking of a judge may become grooved."

IN INTRODUCTION TO THE LEGAL PROCESS, by Bernard F. Cardozo and others. Part 5, TORTS page 808, top, "The question whether the jury acted rationally- that is, whether the verdict is supported by the evidence, whether reasonable men could reach the jury's verdict on the strength of the admissible and creditable evidence presented- is a question of law to be decided by the judge." To arrive at a verdict without a jury, should not a judge still consider how reasonable men, jurors, would consider the facts? The Reader's Digest Almanac for 1967 page 443, gives the income of the average family as \$6,882, 16 $\frac{1}{2}$ % had incomes under \$3,000. Reasonable men at average income could not afford to feel indifferent, to the use of the special delivery service, by those to whom long distance telephone bills are a costly luxury.

The decision of the district court suggests feelings of class preference inconsistent with present legal and social thinking. It is inconsistent with postal regulations and the cases quoted in this brief and other documents presented by the plaintiff.

By argument here presented the plaintiff concludes:

1. Postal regulations have the force of law (see CORPUS JURIS SECUNDUM reference No. 3 this BRIEF page 8) and should be so observed by the postmaster.



2. The plaintiff has the right to recover payment made for services not rendered.

3. Where acts of a postmaster are in violation of Postal Laws the postmaster becomes personally responsible for the consequences of such acts and can claim no immunity as a government officer or postal employee.

4. The right to make a reasonable complaint or petition is a fundamental right enjoyed by all citizens and may not be set aside by a postmaster.

5. The plaintiff is entitled to his reasonable costs.

*Riley Leon Hughes*  
Riley Leon Hughes  
Plaintiff.

Note:

Exhibits were introduced at the trial at the beginning of the testimony. The proper type of notice to be left in a post office box to indicate special delivery mail was being withheld, was introduced by the plaintiff's wife, Mrs Mary Gay Hughes. The exhibits shown on page 9 were introduced by the plaintiff.

The exhibits introduced by Mrs Hughes were obtained by her at the Yuba City post office.

Plaintiff has made payment for the cost of making three copies of the record, and reserves the right to refer to any part thereof.

